MONTANA LEGISLATIVE HISTORY

Chapter 140 ~~19~~ 2001

Bill H _____ S 106 Original bill & history ✓ C

H. Committee on Business & Labor		S. Committee on Business & Labor	
Hearing Date(s) 2-7-01	____C	Hearing Date(s) 1-9-01	____C
_____	____C	_____	____C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out _____	____C		

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

	Returned to Senate		
3/09	Sent to Enrolling		
3/12	Returned from Enrolling		
3/13	Signed by President		
3/13	Signed by Speaker		
3/16	Transmitted to Governor		
3/26	Signed by Governor		
3/26	Chapter Number Assigned		
	Chapter Number 126		
	Effective Date: 3/26/2001 - All Sections		

SB 106 Introduced by Sprague *LC0593 Drafter: B. Campbell*

Require Certain Commercial Loan Agreements to Be Written for Enforcement

12/18	Introduced		
1/03	First Reading		
1/03	Referred to Business and Labor		
1/09	Hearing		
1/11	Committee Executive Action--Bill Passed	9	0
1/11	Committee Report--Bill Passed		
1/15	2nd Reading Passed on Voice Vote	48	2
1/16	3rd Reading Passed	46	3
	Transmitted to House		
2/01	Referred to Business and Labor		
2/07	Hearing		
2/08	Committee Executive Action--Bill Concurred as Amended	12	7
2/09	Committee Report--Bill Concurred as Amended		
3/03	2nd Reading Concurred	63	36
3/05	3rd Reading Concurred	67	33
	Returned to Senate with Amendments		
3/08	2nd Reading House Amendments Concurred on Voice Vote	48	0
3/09	3rd Reading Passed as Amended by House	46	0
3/12	Sent to Enrolling		
3/13	Returned from Enrolling		
3/14	Signed by President		
3/16	Signed by Speaker		
3/19	Transmitted to Governor		
3/28	Signed by Governor		
3/28	Chapter Number Assigned		
	Chapter Number 140		
	Effective Date: 10/01/2001 - All Sections		

SB 107 Introduced by Franklin *LC0514 Drafter: Fox*

Allow Teleconferencing in Mental Health Proceedings

By Request of Legislative Finance Committee

11/16	Fiscal Note Needed
12/18	Introduced
12/20	Fiscal Note Requested
1/03	First Reading
1/03	Referred to Public Health, Welfare and Safety
1/08	Fiscal Note Received
1/10	Fiscal Note Printed
1/15	Revised Fiscal Note Requested
1/17	Revised Fiscal Note Received
1/17	Hearing
1/18	Revised Fiscal Note Printed

SENATE BILL NO. 106

INTRODUCED BY M. SPRAGUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN ACTION MAY NOT BE BROUGHT AGAINST A REGULATED LENDER BASED ON A PROMISE OR COMMITMENT WITH RESPECT TO A COMMERCIAL LOAN IN EXCESS OF $100,000 UNLESS THE PROMISE OR COMMITMENT IS IN WRITING; AND AMENDING SECTION 31-1-111, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Commercial loans -- when written agreement required.** (1) With respect to a commercial loan, an action may not be brought against a regulated lender on a promise or commitment that is not in writing where the promise or commitment is to:

(a) lend money or to extend credit;

(b) alter, amend, renew, extend, or otherwise modify an existing promise, commitment, or agreement to lend money or extend credit; or

(c) make a financial accommodation.

(2) For the purposes of this section, "commercial loan" means money loaned or credit extended primarily for commercial or business purposes, in excess of $100,000, and does not include money lent or credit extended for personal, family, or household purposes and also does not include charge or credit card accounts, personal lines of credit, personal overdraft accounts, or other consumer accounts.

Section 2. Section 31-1-111, MCA, is amended to read:

"31-1-111. Definition of regulated lender. The term "regulated ~~lenders~~ lender", as used in 31-1-112 and [section 1], means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, development corporation, bank holding company, or a mutual or stock insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

(a) an agency of the state of Montana; or

(b) an agency of the federal government;

(2) a subsidiary of an entity described in subsection (1);

(3) a Montana state agency or a federal agency that is authorized to lend money;

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money."

NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 31, chapter 1, part 1, and the provisions of Title 31, chapter 1, part 1, apply to [section 1].

- END -

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on January 9, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)

Members Excused: Sen. Dale Berry (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB112, 1/6/2001; SB106, 1/6/2001; SB93, 1/6/2001; SB74, 1/6/2001

Executive Action:

that this bill would ratify what the department has been doing, and is essentially a housekeeping bill.

Drew Dawson, Department of Public Health and Human Services, supports this bill and handed in written testimony to this effect. EXHIBIT(1)

Troy McGee, Chief of Police, Helena, representing the chiefs of Police Association, stated they are in strong support of the bill.

Jane Jelinski, Montana Association of Counties, supports this bill. She explained that if this bill does not pass the 911 jurisdictions would have to send money back to the general fund and reduce their efforts.

Kathy McGowen, Montana Sheriff's and Peace Officers Association, said the Association voted unanimously in strong support of this bill.

Tony Herbert, Department of Administration, said he strongly supports this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:
{Tape : 1; Side : A; Approx. Time Counter : 6.5}

SENATOR MIKE SPRAGUE asked how much it would cost the local governments if they had to refund the money to the state.

Jane Jelinski stated she thought it was in the hundreds of thousands of dollars.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 7.7}

SENATOR NELSON said it is obvious that this is pretty much a housekeeping thing. The local governments need this money for their 911 emergency services. She explained that was the intent, it just needs to be clarified in the law

HEARING ON SB 106

Sponsor: SENATOR MIKE SPRAGUE, SD 6, BILLINGS

Proponents: **John Cadby, Montana Banking Association**
George Bennett, Montana Banking Association
Keith Colbo, Montana Independent Bankers
Michael P. Varone, Wells Fargo Bank
Phil Johnson, First Interstate Bank

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 8.1}

SENATOR MIKE SPRAGUE, SD 6, Billings, stated that the intent of the bill was to come up with a solution to a problem that may or may not exist. The bill is requiring that any loans over $100,000 dollars have to be in writing.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 10.5}

John Cadby, Montana Banker's Association, spoke of the abundance of bad faith law suits against lenders in the mid 80's. He explained that most of the bad faith law suits were brought about by farmers and ranchers who were complaining that the banker didn't lend them enough money, and therefore they went broke. He point out that in every case the verbal agreements after the original loan had been entered into caused the litigation. He said most neighboring states have passed similar limitations. **EXHIBIT(5)**

George Bennett, Montana Banking Association, stated Montana and Wyoming are the only states that don't have protection for lenders from assertions of oral commitment. **EXHIBIT(2)**

Keith Colbo, Montana Independent Bankers, stated this bill is supported by the Montana Independent Bankers.

Michael P. Varone, Wells Fargo Bank, stated Wells Fargo does require a loan agreement for loans in excess of $100,000. He stated Wells Fargo supports this bill to stop the bad faith law suits which were going on. He noted that this bill would curtail law suits based on assertions or claims by a borrow who may have incorrectly interpreted what a loan officer had said. **EXHIBIT(3)**

Phil Johnson, First Interstate Bank, handed in his testimony. **EXHIBIT(4)**

Opponents' Testimony: None

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 23.1}

SENATOR VICKI COCCHIARELLA asked why you would have an agreement that was not signed.

George Bennett explained that this allows the banker to fax a document which has not been signed which evidences his commitment to lend money.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 27.8}

SENATOR MIKE SPRAGUE concluded that what you don't see on paper you will have a hard time enforcing.

HEARING ON SB93

Sponsor: **SENATOR MIKE HALLIGAN SD 34, MISSOULA**

Proponents: **George Bennett, Montana Banking Association**
Bob Pyfer, Montana Credit Union Network
Keith Colbo, Montana Independent Bankers

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 0.5}

SENATOR MIKE HALLIGAN, SD 34, Missoula, said this bill was to clarify some things that were left out of the Uniform Commercial Code, dealing with lost, stolen or destroyed checks.

Proponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 1}

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EXHIBIT NO. 2
DATE 1-9-2001
BILL NO. SB 106

MONTANA BANKERS ASSOCIATION

Testimony in favor of Senate Bill 106, by George Bennett, MBA Counsel, 443-4121

This new provision will prohibit a person from alleging an oral promise or commitment, alleged to have been made by a "regulated lender" as defined in 31-1-112 (see Section 2 of the Bill) as to a commercial loan.

Excluded from this requirement are all commercial loans under $100,000; all consumer loans in any amount; charge or credit card accounts, personal lines of credit, personal overdraft account or any consumer account.

Consumer loans or consumer accounts are those "for personal, family, or household purposes" and in any amount.

All that is needed to establish a promise or commitment is something in writing, which does not need to be signed so that a telegram, fax , E-mail or any other similar writing can be used.

Applies only to "regulated lenders" which, under 31-1-112 MCA are state and federal agencies, banks, savings banks, savings and loans, credit unions, credit associations, consumer loan licensees, development corporations, bank holding companies, insurance companies organized under state or federal authority and subject to their supervision, and their subsidiaries.

Banks are regulated lenders, and are subject to supervision by the Federal Reserve, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Trade Commission. Banks are audited as to their loans by state and federal agencies. Banks are subject to many state and federal acts including the Truth in Lending Act, the Fair Credit Act, the Fair Debt Collection Practices Act and the Unfair Trade Practices Act.

Of all the western states only Montana and Wyoming do not have statutory provisions requiring a writing to support a claim of a loan promise or commitment.

Our neighboring states (except for Wyoming) have such a provision:

IDAHO Code Section 9-505(5) provides:

> "5. A promise or commitment to lend money or grant or extend credit in an original principal amount of fifty thousand dollars ($50,000) or more made by a person or entity engaged in the business or lending money or extending credit."
> (And the writing must be signed by the party charged)

SOUTH DAKOTA Code Section 53-8-2(4) provides that a writing is required for:

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> "(4) An agreement for a loan of money or for an extension of credit, which agreement may be enforced by a beneficiary for whom the agreement was made, including, but not limited to, vendors of agricultural goods, services or products. A loan or extension of credit made pursuant to 51A-12-12 or chapter 54-11 is exempt from the provisions of this section."
>
> (The exempt transactions under this section are for revolving credit, credit cards and revolving charge accounts. Again the writing under South Dakota law must be signed by the party to be charged.)

NORTH DAKOTA Code Section 9-06-04(4) and (5) requires a writing as to loans of more than $25,000.

COMPARE TO UNIFORM COMMERCIAL CODE. The importance of having something in writing in modern commerce is emphasized by the provisions of the Uniform Commercial Code (UCC) which controls in most if not all states. Under Article 2, which deals with sales, under the Uniform Commercial Code, sales contracts for $500 or more must be in writing and signed, as set forth in Section 30-2-201 MCA, which provides:

> "30-2-201 **Formal requirements - statute of frauds.** (1) Except as otherwise provided in this section a contract for the sale of goods, for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between parties and signed by the party against whom enforcement is sought or by his authorized agent or broker."
> (Emphasis supplied)
>
> (The remaining portion of the section deals with conformation, goods specially made, admissions in pleadings and other circumstances.)

The Uniform Code Commissioners who draft the UCC are experts as to commerce and commercial law. The intent of the UCC is to allow and encourage the free flow of commerce in all states. So these experts in drafting the UCC which deals with personal property transactions recognizes that allowing claims of "oral" agreements has a chilling effect on commerce that can be avoided by the simple requirement of a writing.

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Wells Fargo Bank Montana, N.A.
Helena Offices
Post Office Box 597
Helena, MT 59624
406 447-2021
406 447-2075 Fax

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 3
DATE 1-9-2001
BILL NO. SB 106

Senate Bill #106

Mr. Chairman and Members of the Committee:

I am Michael P. Varone, Senior Vice President of Wells Fargo Bank Montana, N.A. We have 41 locations in 27 communities in the state of Montana, which represents $1.5 billion in assets with a loan to deposit ratio of 70%. I am here today to request that this committee pass Senate Bill 106.

Wells Fargo Bank Montana, N.A. requires loan agreements for loans in excess of $100,000.00 either in a separate loan agreement or in a combined note and credit agreement. The purpose of Senate Bill 106 is to stop lawsuits, which were prevalent in the mid-1980's. Most financial institutions do require a loan agreement for loans in excess of $100,000.00. I think this bill will curtail lawsuits that are based on the assertions or claims of borrowers who may incorrectly interpret verbal terms or conditions of a loan. It is in the best interest of the borrower to only rely upon written commitments or written modifications to the note or loan agreement.

Therefore I am requesting you pass this bill and avoid any misinterpretation by customers of future terms that are not in written form.

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Senate Bill 106 — January 9, 2001

Testimony in support of,

By: Phillip B Johnson
First Interstate Bank - Helena

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4
DATE 1-9-2001
BILL NO. SB106

Borrower A - Mortgaged Business Property to First Bk

- Sold Said Property with an amortization maturing earlier than the maturity of the Mortgage with First Bank - also delivered a "hold harmless" to the Purchaser for the disperity

- 10 years into the Mortgage Borrower A took Chapter 7 Bankruptcy.

- Purchaser came to First Bank to discuss his position because he had since re-sold the property and had a responsibility to deliver clear title to his buyer.

- In the discussion, the position of the purchaser was outlined, reduced to writing and signed by the Bank and purchaser. In the commentary he was referred to his Attorney and in turn, to First Bank's attorney to work out an assumption of Borrower A's debt. The disperity was approximately $40,000.

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• The assumption was processed nine months later

• 4 months after that, the Purchaser sued the Bank for $15,000,000 for alleged bad faith practices.

— The suit proved unmeritorious but cost the Bank in excess of $60,000 to defend itself through District, Supreme and back to District Court.

— Throughout the case the discussions between Purchaser and Bank which had been reduced to writing and signed held the most weight and withstood the Purchaser's challenge of "Bad Faith".

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John Cobby
Montana Bankers Assoc.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5
DATE 1-9-2001
BILL NO. 106

SENATE BILL 106

Mr. Chairman and Members of the Committee:

Business loans made by financial institutions are always made with a written loan agreement. However, when a business gets in trouble financially and decides to sue the bank it is usually for the purpose of obtaining more time to pay off the loan, debt reduction or some other concession. Assertions or claims that additional or different verbal terms or conditions, favoring themselves of course, were part of the original agreement usually come up in the trial. This was prevalent in the mid 80's during Montana's economic crisis when banks were forced to spend millions in defense costs in bad faith lawsuits against banks.

Even if the lender is right, it is usually less expensive to settle rather than fight, but this expense is passed on to other businesses in Montana. Further, most other states have a similar law making it more attractive to loan money to businesses, particularly new businesses. It is important to reduce lender/borrower disputes to protect the free flow of funds necessary to a healthy economy and interstate commerce.

The Iowa statute states its law's purpose is "...to ensure that contract actions and defenses on credit agreements are supported by clear and written proof of the terms of such agreements to protect against fraud and to enhance the clear and predictable understanding of rights and duties under credit agreements."

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Bank examiners, who regulate financial institutions in which your money is deposited, are concerned that borrowers may go outside the written agreement to assert some verbal agreement and the effect this would have on classifying the loan for safety and soundness. The Arkansas Bank Commissioner said in a memo to their Legislature: "The loan files provide the only objective means to determine the extent of a bank's exposure. Any oral understandings or agreements are subject to misinterpretation by banks' customers."

Senate Bill 106 only requires writing or faxing a note to preserve the contractual rights of either party to any commercial loan over $100,000. The note does not have to be signed. Senate Bill 106 does not apply to any consumer loans or credit card loans.

Besides banks and savings & loan associations and credit unions, the bill affects loans made by the Montana State Board of Investments, Farm Credit System and Small Business Administration.

Q. Why shouldn't lenders be bound by verbal statements or commitments?

A. The question is, did the lender make such a statement? Who knows? Such assertions are easy to make, but almost impossible to disprove.

Q. What about a claim of fraud?

A. Fraud can always be asserted based upon a verbal statement. If a party to a loan can show the elements of fraud based on a verbal statement, such evidence can always be the basis of a claim or defense.

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Q. How many lawsuits have lenders lost?

A. Very few in the last decade, but the time to fix the roof is when it is not raining. Over 40 other states have passed similar laws.

Q. What is the need for this bill?

A. Montana has the Uniform Commercial Code that is uniform with other states. To stay in the mainstream of commerce, our laws must be uniform with other states.

Q. What about evidence of verbal statements to explain ambiguity in the written contract

A. Where a written contract is ambiguous, oral or parol evidence can always be offered.

Q. What laws have been passed in neighboring states?

A. Most other states have similar requirements by law. Neighboring states require:

North Dakota requires agreements in writing on all loans over $25,000. Idaho requires agreements in writing on all loans over $50,000. South Dakota requires all controls except revolving credit, credit cars, and charge account credit to be supported by a signed document. Wyoming has not passed a law as yet.

Passing Senate Bill 106 would allow lenders to take a little more risk on that new business idea or that new enterprise, thereby, creating more jobs in your hometown. If we want economic growth, Senate Bill 106 is a good step forward.

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DATE 1-9-01

SENATE COMMITTEE ON ~~SB 106~~ BUSINESS & LABOR

BILLS BEING HEARD TODAY: SB 106, SB 93

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
JOHN CADBY	443 4121	MT BANKERS ASSN	93 106	X	
Michael P. VALONE	447-2008	Wells Fargo Bank NA	106.	X	
GEORGE T. BENNETT	443-4093	MONT. BHRS	106 ? 93	X	
Jeff Brandt	444-3988	DofA/ISD	SB112	X	
Keith Colbo	443-4940	MT Indep. Bankers	93 SB106	X	
Andrea Hornier	443-6820	Verizon	SB112		
Greg Van Horssen	2-0230	State Farm Ins. Co.	SB106	X	
Troy McGee	447-8477	MT. Assoc. Chiefs Police	SB112	X	
Kathy McGowan	443-1510	MT Sheriff's Peace Off	SB112	X	
Phillip Johnson	457-7171	MT Bhrs Assoc	SB106	X	
John M. Doubthy	4203	Leg Auditor	SB112	X	
Jane Jelinski	442-5209	MACo	SB112	X	
DREW DAWSON	444-4458		SB112		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SENATE BILL NO. 106

INTRODUCED BY M. SPRAGUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT AN ACTION MAY NOT BE BROUGHT AGAINST A REGULATED LENDER BASED ON A PROMISE OR COMMITMENT WITH RESPECT TO A COMMERCIAL LOAN IN EXCESS OF $100,000 UNLESS THE PROMISE OR COMMITMENT IS IN WRITING; AND AMENDING SECTION 31-1-111, MCA."

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(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money."

NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 31, chapter 1, part 1, and the provisions of Title 31, chapter 1, part 1, apply to [section 1].

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on February 7, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: None.

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB463, SB30, SB156, SB157, SB106, 2/1/2001
Executive Action: HB389, SB59, SB157, SB30, SB156

REP. MATTHEWS asked what happens if there was a restraining order for something that did not pertain to domestic violence. **REP. LEE** said a restraining order can be ordered for other reasons, but this section was specific to domestic violence. **Ms. Welker** said in Montana the phrase has been changed to "order of protection."

REP. JUNEAU asked who would have access to the information of the location of the victim. **Mr. Braun** said the employees who needed to perform their public duties in relationship to the information would have access. **REP. JUNEAU** said the abuser will find them if they can and try to get this information.

REP. LAWSON inquired about the fiscal note. **Mr. Braun** said there were 7000 acts of domestic violence last year in Montana. He said some of these would involve the same victim, and not all of the victims would qualify for unemployment because many did not have jobs. Unemployment would pay $188 for 14 weeks, he said. He said costs could only be estimated at this time, but that in two years they would have some figures to go on.

REP. HIMMELBERGER asked **Mr. Braun** if the employer account cannot be charged, would this come out of the trust fund. **Mr. Braun** said it would. **REP. HIMMELBERGER** then asked if this would potentially raise unemployment insurance rates for all. **Mr. Braun** said if the fund suffers a $9.3 million hit, it will trigger Schedule 2. Currently, the rate is Schedule 1, which is the lowest rate.

CHMN. MCKENNEY asked if the individual could qualify to receive these benefits and still remain in the abusive relationship. **Mr. Braun** said this would give the victim the economic protection to move out. Most victims stay because of the economic situation. In many instances, the batterer forces the victim to stay at home and not work.

Closing by Sponsor:

REP. LEE stated a price cannot be put on a human life. This bill was about safety, she said, not money. When a victim has a way to escape, the risk is reduced, she concluded.

{Tape : 2; Side : B; Approx. Time Counter : 0}

HEARING ON SB106

Sponsor: **SEN. MIKE SPRAGUE, SD6, Billings**

Proponents: **George Bennet, Montana Bankers Assn.**
Keith Colbo, Montanan Independent Bankers
John Cadby, Montana Bankers Assn.

Opponents: **David Paoli, self, attorney**
Al Smith, Montana Trial Lawyers Assn.

Opening Statement by Sponsor:

SEN. MIKE SPRAGUE, SD6, Billings, said the bill called for any contracts over $100,000 to be in writing so as to be enforceable. He reminded the committee of the rhyme, "when in doubt, write it out." He said the bill was an act which provided that an action may not be brought against a regulated lender based on a promise with respect to a commercial loan in excess of $100,000, unless the promise is in writing.

Proponents' Testimony:

Mr. Bennet noted the act excludes consumer loans and is about commercial loans. He said there have been law suits in the past based on alleged oral offers of loans. He said every state except Montana and Wyoming cover this in one way or another. He stated this bill will help make more money available. He pointed out the Uniform Commercial Code required written contracts for over $500, and therefore this bill should be considered. **EXHIBIT(3)**

Mr. Colbo said this was a much narrower bill than had been before the committee previously. He said this bill makes sense.

Mr. Cadby said he was here in the 1980's when the crisis occurred. He said there was a rash of lawsuits because people think banks have "deep pockets." He said there were two bad faith lawsuits filed in Billings last week in which the people loaned to did not "make it," so the bank is being sued. He said the legislature should want to encourage the banks to make more loans and this bill is one way. **EXHIBIT(4)**

Opponents' Testimony:

Mr. Paoli told the committee that **SEN. SPRAGUE** said this bill was a small portion of a previous bill. The only similarity, **Mr. Paoli** said, was the word "small." He said this bill hits small business "right in the gut." He said it will take away small business' ability to protect themselves. The last thing Montana

small businesses want is a lawsuit, he said. He said it is certainly not accurate to say Montana businessmen lie. To demonstrate his point, he held up a bronze sculpture of a cowboy and a man in a suit shaking hands. The title of the sculpture was "Montana Contract," he noted. He said he currently has a client who was promised a loan by a large bank. They even took him out to dinner to celebrate, he said. His client consequently made a contract and put money down on equipment, he continued. The loan was not granted and his client is now facing bankruptcy. This bill will not make more money available and will hurt small businesses, he said. Montanans should be able to do business on a "handshake and a look in the eye," he concluded.

Mr. Smith opposed the bill. He said it insulates banks and lenders from accountability. He said he had a problem with the part of the bill which says "an action may not be brought against the lender."
{Tape : 2; Side : B; Approx. Time Counter : 0}
He said the bankers already have the freedom to reduce anything to writing they want to. He added that relationships and trust cannot be reduced to writing. He said the job of the legislature is to provide protection for the people against unfair and harmful practices. **EXHIBIT(5)**

Questions from Committee Members and Responses:

REP. BITNEY asked **Mr. Bennet** why no signature was required in the act. **Mr. Bennet** said often at an auction a farmer may request to buy large equipment and an authorization is faxed to the farmer. He then asked how the $100,000 figure was determined. **Mr. Bennet** said it is an arbitrary figure and some states say $25,000. He said the bill originally used $50,000.

REP. GALLIK said the bill seemed like immunity for bankers. **SEN. SPRAGUE** answered that getting a commitment on letterhead was a better way for the borrower.
{Tape : 2; Side : B; Approx. Time Counter : 19.7}
REP. BROWN asked **SEN. SPRAGUE** if it could be made clear an action for fraud was prohibited and not an action of contract. **SEN. SPRAGUE** said if someone sees a problem with it and wants to amend it, "it is your bill."

Closing by Sponsor:
SEN. SPRAGUE said the bill is needed and urged support.

{Tape : 3; Side : A; Approx. Time Counter : 10.5}
HEARING ON SB30

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EXHIBIT 3
DATE 2-7-01
SB 106

(3)

MONTANA BANKERS ASSOCIATION

Testimony in favor of Senate Bill 106, by George Bennett, MBA Counsel, 443-4121

This new provision will prohibit a person from alleging an oral promise or commitment, alleged to have been made by a "regulated lender" as defined in 31-1-112 (see Section 2 of the Bill) as to a commercial loan.

Excluded from this requirement are all commercial loans under $100,000; all consumer loans in any amount; charge or credit card accounts, personal lines of credit, personal overdraft account or any consumer account.

Consumer loans or consumer accounts are those "for personal, family, or household purposes" and in any amount.

All that is needed to establish a promise or commitment is something in writing, which does not need to be signed so that a telegram, fax , E-mail or any other similar writing can be used.

Applies only to "regulated lenders" which, under 31-1-112 MCA are state and federal agencies, banks, savings banks, savings and loans, credit unions, credit associations, consumer loan licensees, development corporations, bank holding companies, insurance companies organized under state or federal authority and subject to their supervision, and their subsidiaries.

Banks are regulated lenders, and are subject to supervision by the Federal Reserve, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Trade Commission. Banks are audited as to their loans by state and federal agencies. Banks are subject to many state and federal acts including the Truth in Lending Act, the Fair Credit Act, the Fair Debt Collection Practices Act and the Unfair Trade Practices Act.

Of all the western states only Montana and Wyoming do not have statutory provisions requiring a writing to support a claim of a loan promise or commitment.

Our neighboring states (except for Wyoming) have such a provision:

IDAHO Code Section 9-505(5) provides:

> "5. A promise or commitment to lend money or grant or extend credit in an original principal amount of fifty thousand dollars ($50,000) or more made by a person or entity engaged in the business or lending money or extending credit."
> (And the writing must be signed by the party charged)

SOUTH DAKOTA Code Section 53-8-2(4) provides that a writing is required for:

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> "(4) An agreement for a loan of money or for an extension of credit, which agreement may be enforced by a beneficiary for whom the agreement was made, including, but not limited to, vendors of agricultural goods, services or products. A loan or extension of credit made pursuant to 51A-12-12 or chapter 54-11 is exempt from the provisions of this section."
>
> (The exempt transactions under this section are for revolving credit, credit cards and revolving charge accounts. Again the writing under South Dakota law must be signed by the party to be charged.)

NORTH DAKOTA Code Section 9-06-04(4) and (5) requires a writing as to loans of more than $25,000.

COMPARE TO UNIFORM COMMERCIAL CODE. The importance of having something in writing in modern commerce is emphasized by the provisions of the Uniform Commercial Code (UCC) which controls in most if not all states. Under Article 2, which deals with sales, under the Uniform Commercial Code, sales contracts for $500 or more must be in writing and signed, as set forth in Section 30-2-201 MCA, which provides:

> "30-2-201 **Formal requirements - statute of frauds.** (1) Except as otherwise provided in this section a contract for the sale of goods, for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between parties and signed by the party against whom enforcement is sought or by his authorized agent or broker."
> (Emphasis supplied)
>
> (The remaining portion of the section deals with conformation, goods specially made, admissions in pleadings and other circumstances.)

The Uniform Code Commissioners who draft the UCC are experts as to commerce and commercial law. The intent of the UCC is to allow and encourage the free flow of commerce in all states. So these experts in drafting the UCC which deals with personal property transactions recognizes that allowing claims of "oral" agreements has a chilling effect on commerce that can be avoided by the simple requirement of a writing.

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EXHIBIT 4
DATE 2-7-01
SB 106

(4)

Senate Bill # 106

Requires commercial loans over $100,000 to be in writing and prohibits oral commitments alleged to have been made unless there is evidence of fraud or ambiguity in the contract.

SB 106 Passed out of Senate Business & Labor Committee unanimously. There was no opposition. It passed the Senate 46 to 3.

Only applies to regulated lenders: banks, insurance companies, state board of investments loans

Encourages lenders to take more risk in lending to start up businesses or extend credit to a business in need in Montana's Litigatious atmosphere.

Most all states have adopted similar laws: ND has a floor of $25,000; Idaho's is $50,000 and SD has no floor.

The Uniform Commercial Code in all 50 states requires that in the sale of goods of over only $500 is not enforceable by way of action or defense unless it is in writing.

The Uniform Code Commissioners, experts in commercial law, recognize that allowing claims of oral agreements has a chilling effect on commerce.

No signature is required...a fax or email is sufficient to hold both parties liable to the written agreement.

No consumer loans and even commercial loans under $100,000 are not covered by this Bill.

Bank examiners make sure your money in banks is safe by examining loans and are concerned if borrowers go outside the written agreement.

SB 106 keeps us in the mainstream of commerce with the other 49 states.

John Cadby, Montana Bankers Assoc., 443-4121

EXHIBIT 5
DATE 2-7-01
SB 106

(5)

History: En. Sec. 2186, Civ. C. 1895; re-en. Sec. 5018, Rev. C. 1907; re-en. Sec. 7520, R.C.M. 1921; Cal. Civ. C. Sec. 1625; Field Civ. C. Sec. 795; re-en. Sec. 7520, R.C.M. 1935; R.C.M. 1947, 13-607.

Cross-References

Consideration of circumstances surrounding execution, 1-4-102.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-2-905. When extrinsic evidence concerning a written agreement may be considered. (1) Whenever the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms. Therefore, there can be between the parties and their representatives or successors in interest no evidence of the terms of the agreement other than the contents of the writing except in the following cases:

(a) when a mistake or imperfection of the writing is put in issue by the pleadings;

(b) when the validity of the agreement is the fact in dispute.

(2) This section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as described in 1-4-102, or other evidence to explain an extrinsic ambiguity or to establish illegality or fraud.

(3) The term "agreement", for the purposes of this section, includes deeds and wills as well as contracts between parties.

History: En. Sec. 610, p. 198, L. 1877; re-en. Sec. 610, 1st Div. Rev. Stat. 1879; re-en. Sec. 628, 1st Div. Comp. Stat. 1887; re-en. Sec. 3132, C. Civ. Proc. 1895; re-en. Sec. 7873, Rev. C. 1907; re-en. Sec. 10517, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1856; re-en. Sec. 10517, R.C.M. 1935; R.C.M. 1947, 93-401-13; amd. Sec. 22, Ch. 117, L. 1979.

Cross-References

Consideration of circumstances surrounding execution, 1-4-102.

Fraud, mistake, and condition of mind, Rule 9(b), M.R.Civ.P. (see Title 25, ch. 20).

Uncertainty to be resolved against party causing it, 28-3-206.

Interpretation of terms that are ambiguous or were intended in different sense by different parties, 28-3-306.

Reference to circumstances permissible, 28-3-402.

Final written expression — parol or extrinsic evidence, 30-2-202.

28-2-906. When written contract takes effect. A contract in writing takes effect upon its delivery to the party in whose favor it is made or to his agent.

History: En. Sec. 2187, Civ. C. 1895; re-en. Sec. 5019, Rev. C. 1907; re-en. Sec. 7521, R.C.M. 1921; Cal. Civ. C. Sec. 1626; Field Civ. C. Sec. 796; re-en. Sec. 7521, R.C.M. 1935; R.C.M. 1947, 13-608.

Cross-References

Formation in general — U.C.C. — sales, 30-2-204.

Offer and acceptance in formation of contract, 30-2-206.

28-2-907. Applicability of rules concerning transfers in general. The provisions of Title 70, chapter 1, part 5, and 70-20-110 concerning the delivery of grants, absolute and conditional, apply to all written contracts.

History: En. Sec. 2188, Civ. C. 1895; re-en. Sec. 5020, Rev. C. 1907; re-en. Sec. 7522, R.C.M. 1921; Cal. Civ. C. Sec. 1627; Field Civ. C. Sec. 797; re-en. Sec. 7522, R.C.M. 1935; R.C.M. 1947, 13-609.

Cross-References

U.C.C. — sales — power to transfer, 30-2-403.

U.C.C. — sales — performance, Title 30, ch. 2, part 5.

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TITLE 31

CREDIT TRANSACTIONS AND RELATIONSHIPS

Ch.
1. Credit Transactions.
2. Debtor and Creditor Relationships.
3. Related Credit Practices.

CHAPTER 1

CREDIT TRANSACTIONS

Part 1 — Loans of Money—Interest Rates

31-1-101. Loan of money — what constitutes.
31-1-102. Loan to be repaid in current money.
31-1-103. Loan presumed to be on interest.
31-1-104. Interest defined.
31-1-105. Annual rate.
31-1-106. Legal interest.
31-1-107. Interest rate allowed by agreement.
31-1-108. Penalty for usury — action to recover excessive interest.
31-1-109. When interest becomes part of principal.
31-1-110. Renumbered 25-9-205 by Code Commissioner, 1979.
31-1-111. Definition of regulated lender.
31-1-112. Interest rate limitation exemption — regulated lenders — merchant finance.
31-1-113. Limitation of rule of 78ths.
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Part 2 — Retail Installment Sales

31-1-201. Short title.
31-1-202. Definitions.
31-1-203. Penalties.
31-1-204. Waiver.
31-1-205 through 31-1-210 reserved.
31-1-211. Powers of department.
31-1-212. Investigations and complaints.
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31-1-221. Licensing of sales finance companies required.
31-1-222. Denial, suspension, or revocation of licenses.
31-1-223 through 31-1-230 reserved.
31-1-231. Requirements of retail installment contracts.
31-1-232. Buyer's right of rescission.
31-1-233. Insurance.
31-1-234. Transfer of equity — fee.
31-1-235. Delinquency fee.
31-1-236. Notice and receipt of payment.
31-1-237 through 31-1-240 reserved.
31-1-241. Finance charge limitation.
31-1-242. Refunds on prepayment.
31-1-243. Refinancing retail installment contract.

Part 3 — Wage Brokers

31-1-301. Wage brokers to procure license and give bond.
31-1-302. Issuance of license — terms and amount thereof.

31-1-303. Wage broker defined.
31-1-304. Restrictions upon assignment of wages or salary.
31-1-305. Interest on loans — amount and computation.
31-1-306. Spouse must join in assignment of wages — acknowledgment.
31-1-307. Assignments invalid without notice to employer — filing assignments.
31-1-308. Assignment to be considered a loan.
31-1-309. Violation — penalties.
31-1-310. When note, instrument, or assignment void.

Part 4 — Pawnbrokers

31-1-401. Interest pawnbrokers may receive — civil enforcement.
31-1-402. Pawnbroker to keep register.
31-1-403 through 31-1-406. Repealed.
31-1-407. Violation a misdemeanor.

Part 5 — Retail Sales—Late Payment Charges

31-1-501. Late payment charges — accounts receivable for merchandise sold at retail.
31-1-502. Periodic statement to be furnished to debtor.

Part 6 — State-Sponsored Credit Card (Repealed. Sec. 2, Ch. 252, L. 1995)

Part 7 — Montana Deferred Deposit Loan Act

31-1-701. Short title.
31-1-702. Purpose — rules.
31-1-703. Definitions.
31-1-704. Scope.
31-1-705. License — business locations —rules.
31-1-706 through 31-1-710 reserved.
31-1-711. Annual examinations — fee.
31-1-712. License revocation.
31-1-713. Complaint procedure.
31-1-714. Information and annual reports.
31-1-715. Loan requirements.
31-1-716 through 31-1-720 reserved.
31-1-721. Required disclosures — loan agreement.
31-1-722. Prohibited and permitted fees — attorney fees and costs.
31-1-723. Prohibited acts.
31-1-724. Civil remedies.
31-1-725. Criminal penalties.

Chapter Cross-References

Creation of state debt, Art. VIII, sec. 8, Mont. Const.

Debt limitations of local government entities, Art. VIII, sec. 10, Mont. Const.

Use of money borrowed by local government entity, Art. VIII, sec. 11, Mont. Const.

Department of Commerce — head, 2-15-1801.

Trust indentures and mortgages under housing law, 7-15-4463, 7-15-4506, 7-15-4521 through 7-15-4532.

Gambling on cash basis, 23-5-157.

U.C.C. — sales, Title 30, ch. 2.

U.C.C. — negotiable instruments, Title 30, ch. 3.

U.C.C. — letters of credit, Title 30, ch. 5.

U.C.C. — secured transactions, Title 30, ch. 9.

Sales of personal property, Title 30, ch. 11, part 2.

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

Authority of state banks to make real estate loans, 32-1-430.

False statement to obtain loan, 32-1-474.

Credit life insurance and credit disability insurance, Title 33, ch. 21, part 1.

Attorney prohibited from buying claim or demand for purpose of bringing action, 37-61-408.

Defrauding creditors, 45-6-315.

Issuing bad check, 45-6-316.

Deceptive practices, 45-6-317.

Chain distributor schemes, 45-6-319.

Discrimination in credit prohibited, 49-2-306, 49-3-206.

Method of filing lien on motor vehicles, 61-3-103.

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31-1-101. Loan of money -- what constitutes. A loan of money is a contract by which one delivers a sum of money to another and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the law on loan for use.

History: En. Sec. 2580, Civ. C. 1895; re-en. Sec. 5206, Rev. C. 1907; re-en. Sec. 7720, R.C.M. 1921; Cal. Civ. C. Sec. 1912; Field Civ. C. Sec. 966; re-en. Sec. 7720, R.C.M. 1935; R.C.M. 1947, 47-119.

31-1-102. Loan to be repaid in current money. A borrower of money, unless there is an express contract to the contrary, must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

History: En. Sec. 2581, Civ. C. 1895; re-en. Sec. 5207, Rev. C. 1907; re-en. Sec. 7721, R.C.M. 1921; Cal. Civ. C. Sec. 1913; Field Civ. C. Sec. 967; re-en. Sec. 7721, R.C.M. 1935; R.C.M. 1947, 47-120.

31-1-103. Loan presumed to be on interest. Whenever a loan of money is made, it is presumed to be made upon interest unless it is otherwise expressly stipulated at the time in writing.

History: En. Sec. 2582, Civ. C. 1895; re-en. Sec. 5208, Rev. C. 1907; re-en. Sec. 7722, R.C.M. 1921; Cal. Civ. C. Sec. 1914; Based on Field Civ. C. Sec. 968; re-en. Sec. 7722, R.C.M. 1935; R.C.M. 1947, 47-121.

31-1-104. Interest defined. Interest is the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money.

History: En. Sec. 2583, Civ. C. 1895; re-en. Sec. 5209, Rev. C. 1907; re-en. Sec. 7723, R.C.M. 1921; Cal. Civ. C. Sec. 1915; Based on Field Civ. C. Sec. 969; re-en. Sec. 7723, R.C.M. 1935; R.C.M. 1947, 47-122.

31-1-105. Annual rate. When a rate of interest is prescribed by a law or contract without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.

History: En. Sec. 2584, Civ. C. 1895; re-en. Sec. 5210, Rev. C. 1907; re-en. Sec. 7724, R.C.M. 1921; Cal. Civ. C. Sec. 1916; Field Civ. C. Sec. 970; re-en. Sec. 7724, R.C.M. 1935; R.C.M. 1947, 47-123.

31-1-106. Legal interest. (1) Except as otherwise provided by the Uniform Commercial Code or 31-1-111 and 31-1-112, unless there is an express contract in writing fixing a different rate or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all moneys at the rate of 10% a year after they become due on:

(a) any instrument of writing, except a judgment;
(b) an account stated;
(c) moneys lent or due on any settlement of accounts from the date on which the balance is ascertained; and
(d) moneys received for the use of another and detained from him.

(2) In the computation of interest for a period of less than 1 year, 365 days constitute a year.

History: En. Sec. 2585, Civ. C. 1895; amd. Sec. 1, p. 125, L. 1899; re-en. Sec. 5211, Rev. C. 1907; re-en. Sec. 7725, R.C.M. 1921; Cal. Civ. C. Sec. 1917; amd. Sec. 1, Ch. 144, L. 1933; re-en. Sec. 7725, R.C.M. 1935; amd. Sec. 11-130, Ch. 264, L. 1963; amd. Sec. 38, Ch. 234, L. 1971; amd. Sec. 11, Ch. 185, L. 1977; R.C.M. 1947, 47-124; amd. Sec. 3, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 1, Ch. 263, L. 1985.

31-1-107. Interest rate allowed by agreement. (1) Parties may agree in writing for the payment of any rate of interest that does not exceed the greater of 15% or an amount that is 6 percentage points per annum above the prime rate of major New York banks, as published in the Wall Street Journal edition dated 3 business days prior to the execution of the agreement. Interest must be allowed according to the terms of the agreement.
(2) A loan that is not usurious when made is lawful for the duration of the loan, provided the loan agreement is not substantially changed. This subsection does not apply to loan renewals.
(3) The provisions of this section do not apply to regulated lenders as defined in 31-1-111.

History: En. Sec. 2586, Civ. C. 1895; re-en. Sec. 5212, Rev. C. 1907; amd. Sec. 1, Ch. 36, L. 1913; amd. Sec. 1, Ch. 62, L. 1919; re-en. Sec. 7726, R.C.M. 1921; Cal. Civ. C. Sec. 1918; re-en. Sec. 7726, R.C.M. 1935; amd. Sec. 1, Ch. 503, L. 1975; R.C.M. 1947, 47-125; amd. Sec. 2, Ch. 373, L. 1979; amd. Sec. 4, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 1, Ch. 567, L. 1983; amd. Sec. 1, Ch. 588, L. 1993.

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31-1-108. Penalty for usury -- action to recover excessive interest. (1) The taking, receiving, reserving, or charging a rate of interest greater than is allowed by 31-1-107 shall be deemed a forfeiture of a sum double the amount of interest which the note, bill, or other evidence of debt carries or which has been agreed to be paid thereon.
(2) When a greater rate of interest has been paid, the person by whom it has been paid, his heirs, assigns, executors, or administrators may recover from the person, firm, or corporation taking, receiving, reserving, or charging same a sum double the amount of interest so paid, provided that such action shall be brought within 2 years after the payment of said interest, and provided that, before any suit may be brought to recover such usurious interest, the party bringing suit must make written demand for return of said interest so paid.
History: En. Sec. 2, Ch. 36, L. 1913; re-en. Sec. 7727, R.C.M. 1921; re-en. Sec. 7727, R.C.M. 1935; R.C.M. 1947, 47-126.

31-1-109. When interest becomes part of principal. The parties may, in any contract in writing whereby any debt is secured to be paid, agree that, if the interest on such debt is not punctually paid, it shall become a part of the principal and thereafter bear the same rate of interest as the principal debt.

History: En. Sec. 2587, Civ. C. 1895; re-en. Sec. 5213, Rev. C. 1907; re-en. Sec. 7728, R.C.M. 1921; Cal. Civ. C. Sec. 1919; re-en. Sec. 7728, R.C.M. 1935; R.C.M. 1947, 47-127.

31-1-110. Renumbered 25-9-205 by Code Commissioner, 1979.

31-1-111. Definition of regulated lender. The term "regulated lenders" as used in 31-1-112 means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, development corporation, bank holding company, or a mutual or stock insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:
(a) an agency of the state of Montana; or
(b) an agency of the federal government;
(2) a subsidiary of an entity described in subsection (1);
(3) a Montana state agency or a federal agency that is authorized to lend money;
(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money.
History: En. Sec. 1, Ch. 275, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 1, Ch. 406, L. 1985; amd. Sec. 1, Ch. 294, L. 1991.

31-1-112. Interest rate limitation exemption -- regulated lenders -- merchant finance. (1) A regulated lender is exempt from all limitations on the rate of interest that it may charge and is exempt from the operation and effect of all usury statutes.

(2) A finance operation that finances transactions between merchants, as defined in 30-2-104, is also exempt from usury limits.
History: (1)En. Sec. 2, Ch. 275, L. 1981; (2)En. Sec. 4, Ch. 276, L. 1981; amd. Sec. 1, Ch. 9, L. 1983; amd. Sec. 1, Ch. 22, L. 1983.

31-1-113. Limitation of rule of 78ths. The sum of the monthly time balances method of computing interest or refunds on prepayment, which is also known as the rule of 78ths, may not be used in any loan agreement or retail installment contract unless the term of the loan or contract does not exceed 61 months.

History: En. Sec. 3, Ch. 135, L. 1983.

31-1-114 reserved.

31-1-115. Issuing credit cards to minors -- collection of debt. (1) An issuer of a credit card or similar loan advance access device may not issue a credit card or similar loan advance access device to a minor, as defined in 41-1-101, residing in this state without first obtaining consent to the issuance from the minor's parent or legal guardian.

(2) An issuer of a credit card or similar loan advance access device that does not receive a parent's or legal guardian's consent, as required in subsection (1), before issuing the credit card or similar loan advance access device to a minor may not collect in this state from the minor or the minor's parent or guardian any debt incurred by the minor through the use of the credit card or similar loan advance access device.

History: En. Sec. 1, Ch. 21, L. 1997.

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business and Labor Committee

DATE Feb. 7, 2001

BILL NO. SB 106 SPONSOR(S) Sen. Sprague

" Commercial loan agreements "

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	John Cadby	Helena	~~MT Bankers Assn~~
(P) O I	George F. Bennett	Helena	MONT. BKRS
(P) O I	Keith L. Colbo	Helena	MT Indep Bankers
(P) O I	Greg Van Horssen	Helena	State Farm Ins. Co
P (O) I	David Paoli	Missoula	Self
P (O) I	Doug Wipplinger	Plains	Self
P (O) I	AL Smith	Helena	MTLA
(P) O I	Jacqueline Lenmark	Helena	Am. Ins. Assn
P O I			
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on February 8, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. Donald Steinbeisser (R)
Rep. James Whitaker (R)

Members Excused: Rep. Carol C. Juneau (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Brett Tramelli (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB413, HB493, HB499, HB500, 2/5/2001
Executive Action: HB463, HB493, SB106

REP. GALVIN-HALCRO asked **Mr. Ertelt** about the fact **Ms. Anderson** said the RU-46 pill is not distributed. **Mr. Ertelt** said it was recently approved and Congress will be debating it soon, so that could change. He said he was also concerned about the other drugs out there, including drugs used in assisted suicide. He said he believed this was of a great concern to pharmacists who would like to opt out of dispensing a drug and did not want to be fired for doing so.

Closing by Sponsor:

REP. DAVIES noted that the ACLU talked about setting aside one's beliefs, and asked the committee how a person could do that. "I couldn't," he said. He asked the committee to consider how a pharmacist would feel, if forced upon pain of losing his or her job, to provide drugs for an assisted suicide. He reminded them the Hippocratic Oath is about providing health.

EXECUTIVE ACTION ON HB493

Motion/Vote: **REP. FRITZ** moved that **HB493 DO PASS. Motion carried unanimously. 19-0.**

EXECUTIVE ACTION ON SB106

Motion: **REP. LAWSON** moved that **SB106 BE CONCURRED IN.**

Discussion: **Motion**: **REP. LAIBLE** moved that **SB106 BE AMENDED.**

Discussion:
REP. MATTHEWS said he wanted to see the bill pass but opposed the amendments because they will make it harder to pass.

CHMN. MCKENNEY said he did not get a sense the proponents had a desire for change.

REP. LAIBLE withdrew his amendment.

REP. GALLIK said there are too many "designer bills" for special interest groups. He asked why this bill should be limited to bankers, and why it couldn't include farm implement dealers. He said as a result of term limits the lobbyists now have the histories of institutional influence. He said the bill will be a prohibition of the free flow of commerce.

REP. STEINBEISSER said it is a good bill and helps the customers as well as the banks.

REP. BROWN proposed an amendment which specifies this action is relative only to contracts .

Motion/Vote: **REP. BROWN** moved that **SB106 BE AMENDED. Motion carried 18-1 with Gallik voting no.**

Motion: **REP. LAWSON** moved that **SB106 BE CONCURRED IN AS AMENDED.**

Discussion:

REP. GALLIK asked again why bankers were being singled out.

REP. LAIBLE said every bill has a special interest. The bills are there because a constituent has addressed an area unfair to them, he said. This happens to be a banking bill which tries to level the playing field, he added.

REP. GALLIK responded he understood why the bankers wanted it, however, his question was why not include others.

Vote: Motion **SB106 carried 12-7 with Fritz, Gallik, Galvin-Halcro, Juneau, Keane, Musgrove, and Tramelli voting no.**

{Tape : 4; Side : A; Approx. Time Counter : 0}

EXECUTIVE ACTION ON HB463

Motion: **REP. LAWSON** moved that **HB463 DO PASS.**

Discussion:
Motion: **REP. LAWSON** moved that **HB463 DO PASS AS AMENDED.**
Vote: Motion **HB463 AMENDMENT 1 carried unanimously. 19-0.**

Motion: **REP. LAWSON** moved that **HB463 DO PASS AS AMENDED.**

Discussion:
REP. LAIBLE said he was concerned the individual could get unemployment benefits and not do anything about the abusive situation. He said it would open up to fraud where the husband could tell the wife to go talk to the clergy and say they were abused, so they could collect money and take a vacation. He said if there were abuse the law should do something to end it, not allow it to continue.

Vote: Motion **HB463 AMENDMENT 2 carried unanimously.**

AN ACT PROVIDING THAT AN ACTION MAY NOT BE BROUGHT AGAINST A REGULATED LENDER BASED ON A PROMISE OR COMMITMENT WITH RESPECT TO A COMMERCIAL LOAN IN EXCESS OF $100,000 UNLESS THE PROMISE OR COMMITMENT IS IN WRITING; AND AMENDING SECTION 31-1-111, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Commercial loans -- when written agreement required. (1) With respect to a commercial loan, a contract action or a breach of contract action may not be brought against a regulated lender on a promise or commitment that is not in writing where the promise or commitment is to:

(a) lend money or to extend credit;

(b) alter, amend, renew, extend, or otherwise modify an existing promise, commitment, or agreement to lend money or extend credit; or

(c) make a financial accommodation.

(2) For the purposes of this section, "commercial loan" means money loaned or credit extended primarily for commercial or business purposes, in excess of $100,000, and does not include money lent or credit extended for personal, family, or household purposes and also does not include charge or credit card accounts, personal lines of credit, personal overdraft accounts, or other consumer accounts.

Section 2. Section 31-1-111, MCA, is amended to read:

"**31-1-111. Definition of regulated lender.** The term "regulated ~~lenders~~ lender", as used in 31-1-112 and [section 1], means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, development corporation, bank holding company, or a mutual or stock insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

(a) an agency of the state of Montana; or

(b) an agency of the federal government;

(2) a subsidiary of an entity described in subsection (1);

(3) a Montana state agency or a federal agency that is authorized to lend money;

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 31, chapter 1, part 1, and the provisions of Title 31, chapter 1, part 1, apply to [section 1].

- END -